TAN LAI WAH v. FIRST NATIONAL BANK OF CHICAGO

[P.C. (Lord Diplock, Lord Keith of Kinkel, Lord Scarman, Lord Brightman & Sir Denys Buckley) February 8, 1984]

[Privy Council Appeal No. 38 of 1981]

Banking – Bank granting overdraft facilities – Guarantee for unlimited liability – Plea of non est factum – Plea rejected by appellate court.

Contract – Non est factum – Plea rejected.

In this case the appellant was a successful landbroker for 17/18 years. She contended that she did not know that the document which she signed was a guarantee for an unlimited amount otherwise she would not have signed it. Although her plea of *non est factum* was accepted by the trial court, this judgment was reversed by the Court of Appeal – See [1982] 2 M.L.J. 100. The appellant appealed.

Held: the appeal must be dismissed as the Court of Appeal was correct in rejecting the plea of *non est factum.*

PRIVY COUNCIL APPEAL FROM SINGAPORE.

John C. Beveridge Q.C. (*Miss Tuan Kay* with him) for the appellant.

R. Alexander Q.C. (*N. Chambers* with him) for the respondent.

Lord Diplock (delivering Decision of the Board): This is an appeal brought by a Chinese lady who had been a successful land broker for 17/18 years. The appeal is against a judgment for moneys payable under a guarantee of an overdraft entered into as long ago as 1974. The only defence persisted in before their Lordships was one of *non est factum* to the guarantee which was signed. It was first raised some 15 months after the defence had originally been filed. The learned trial judge surprisingly upheld that defence. His judgment was reversed by the Court of Appeal for reasons with which their Lordships can find no fault. Their Lordships would merely refer to the last sentence of the Court of Appeal's judgment on this particular issue:–

"It is also our view that having regard to her long experience as a land broker and other spheres of business as previously set out – factors which the learned trial judge appeared to have not considered – her mere assertion that she thought the document she signed was one guaranteeing her a half share in [that parcel of land] was unbelievable."

While paying a deserved tribute to the ingenious and seductive arguments advanced by Mr. Beveridge in an endeavour to uphold the judgment of the trial judge, their Lordships must nevertheless dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Cameron Markby; Coward Chance.*

SINGAPORE REPORTS

KWONG KUM SUN (S) PTE. LTD. v. LIAN SOON SIEW & ORS.

[C.A. (Wee Chong Jin C.J., Sinnathuray & Rajah JJ.) January 10, 1984]

[Singapore – Civil Appeal No. 83 of 1982]

Contract – Claim for payment for work done and materials supplied – Counterclaim – Whether there was binding contract – Parties must have "finished reaching an agreement" – Court to infer intention.

On March 13, 1976, the HDB awarded to the respondents, a firm of building contractors, a contract to build 8 blocks of single storey workshops, an electrical substation and 2 transformer rooms at Jalan Eunos. The respondents agreed to complete the project by February 8, 1977 unless extensions were granted by the HDB. On April 15, 1976, the appellants, a company carrying on business as importers of glass sheets and engaged as glazing contractors, wrote to the respondents a letter offering to supply and install glass for the project. The respondents on the same day notified their confirmation and acceptance of the offer on the letter itself.

The present appeal arose from a claim by the appellants for the sum of $11,835.01 for work done and glass materials supplied to the respondents. The respondents counterclaimed for the sum of $9,011.00 for the additional costs paid to another contractor to complete the works and the sum of $104,370.00 being liquidated damages paid by the respondents to the HDB. The trial judge gave judgment for the respondents against the appellants for the sum of $73,479.89 and costs. The appellants appealed on the ground, *inter alia,* that the learned Judge had wrongly held that the letter had created a binding contract between the parties when on the evidence he should have found that the letter was an invitation to treat.

Held, dismissing the appeal: (1) the general rule relating to the creation of a binding agreement is that "for the parties to be bound they must have finished reaching an agreement, so that it is possible to infer an intention on the part of both of them to be bound immediately". In this case by the letter, the appellants and the respondents had finished reaching an agreement, and it was against the weight of the evidence that the appellants were not in breach of it;

(2) the learned trial judge had taken into account the fact that the appellants were not the contractors for the project and their contract was merely to supply the glass after substantial completion of the project by the respondents. There was therefore no reason to interfere with the assessment of damages made by the learned Judge.

COURT OF APPEAL.

Tan Jing Quee for the appellants.

Edmund Nathan for the respondents.

Cur. Adv. Vult.

Sinnathuray J. (delivering the Judgment of the Court): The appeal arose from a claim by the appellants for the sum of $11,835.01 for work done and glass materials supplied to the respondents, the main contractors for a Housing & Development Board ("HDB") project at Jalan Eunos. The respondents counterclaimed for the sum of $9,011.00 for the additional costs paid to another contractor to complete the works and the sum of $104,370.00 being liquidated damages paid by the respondents to the HDB. Lai, J. gave judgment for the respondents against the appellants for the sum of $73,479.89 and costs. At the conclusion of the hearing of the appeal, we dismissed the appeal with costs. We now give our reasons.

On March 13, 1976, the HDB awarded a contract to the respondents, a firm of building contractors, to build eight blocks of single storey workshops, an electrical substation and two transformer room at Jalan Eunos. The respondents agreed to complete the project on February 8, 1977 unless extensions were granted by the HDB.

On April 15, 1976, the appellants, a company carrying on business as importers of glass sheets and engaged as glazing contractors, wrote to the respondents a letter offering to supply and install glass for the project. The respondents on the same day notified their confirmation and acceptance of the offer on the letter itself. A ground of appeal was that the learned Judge had wrongly held that the letter had created a binding contract between the parties when on the evidence he should have found that the letter was an invitation to treat. It is therefore necessary to set out the letter in full. It reads as follows:

"Our Ref: KKS/SLH/Q/0125/76

April 15, 1976

Messrs Suan Lian Huat Construction
248-B, Geylang Road
Singapore 14

Re: 8 Blocks Single Storey Workshops (74 Units) and 2-Electric Sub-Station And Transformer Rooms At Jalan Eunos, Contract I

We thank you for your enquiry and have pleasure in submitting our prices for the supply and fixing of glass to louvres as follows:–

1. 6mm Obscured Wired Glass Fixed To Louvres @ per sq. ft. $0.95.
2. 6mm Obscured Wired Glass Fixed To Panels With Putty @ sq. ft. $1.15

We hope that the above prices are acceptable to you and shall be grateful if you will kindly sign and return the duplicate copy of this letter to us for our records.

Yours faithfully,
KWONG KUM SUN (S) PTE LTD
GLASS DIVISION

(Sgd.) Gan Chee Siong
Gan Chee Siong
Manager

GCS/bc

We confirm acceptance of the above SUAN LIAN HUAT CONSTRUCTION

(Sgd.) Lian Soon Siew
Signature & Chop

The submission for the appellants was that the letter was vague, it did not contain all the terms of the contract, specifically it did not contain an agreement between the parties as to the quantity of glass to be supplied by the appellants to the respondents, nor did it specify the time as to the delivery and installation of the glass to be supplied. Counsel for the appellants relied on the proposition: "To constitute a binding contract there must be a concluded bargain, and a concluded contract is one which settles everything that is necessary to be settled and leaves nothing to be settled by agreement between the parties.": see *Halsbury's* Laws of England, 4th Edition, Volume 9, page 139 paragraph 261.

We rejected this submission. We were of the view that the law applicable to the facts in this case is the statement, following on the proposition cited by counsel in *Halsbury's*, which is supported by many reported cases (see footnote 2 of paragraph 261, *supra*) that the general rule relating to the creation of a binding agreement is that "for the parties to be bound they must have finished reaching an agreement, so that it is possible to infer an intention on the part of both of them to be bound immediately".

Now, as regards intention, it is to be noted that at the trial the appellants' witness, who had secured the contract for the appellants to supply glass to the respondents, said that the letter was "a mutual agreement for the supply and fixing of glass for a particular project at a particular price". He also explained that in this kind of contract it was not a normal practice to give the quantity of glass required.

There was also other evidence relating to the subject of the quantity of glass to be supplied.

On the day when the letter dated April 15, 1976 was written, the appellants had agreed in another letter, on which there was no dispute, to supply to the respondents 2,548 sets of ten blades double control louvres for the project. In the light of this contract for the louvres, there can be no doubt that, as the learned Judge found, the appellants as experienced glass suppliers were aware of the quantity of glass they had to supply under the letter.

Finally, as to when the glass for the project was to be delivered and installed, the same witness for the appellants said that the respondents would inform the appellants as and when the glass was required. Moreover, his evidence was, the appellants' offer was not subject to the availability of glass.

The learned Judge found that the letter was "a contractual document". He must have held that the letter was an offer for the supply and fixing of glass for the project which upon confirmation and acceptance by the respondents had created a binding agreement between the parties. Counsel for the appellants, having referred us to *Halsbury's*, another way of looking at the case was that on the evidence we have referred to the inference must be that it was the intention on the part of the appellants and the respondents to be bound immediately upon confirmation and acceptance of the letter by the respondents. In our judgment, by the letter the appellants and the respondents had finished reaching an agreement.

Next, it was urged upon us that if there was a concluded contract in the letter, the appellants were not in breach of it. We rejected this submission as it was against the weight of the evidence. The evidence was that when the buildings were ready for the installation of the glass, the appellants were unable to supply the glass. As late as July 26, 1977, the appellants wrote to the solicitors for the respondents that "we have repeatedly informed your clients that there is a shortage of glass panes in the market and we will arrange for the delivery of the same as and when they are available". As this was clearly not a term of the contract, the appellants were in breach of it.

The last ground of appeal was that the damages had been wrongly computed. It was not in dispute that when the final extension given by the HDB expired on July 25, 1977, despite the oral requests and written warnings by the respondents' solicitors of the danger of having to pay the HDB liquidated damages, the appellants were unable to supply and install the glass for the buildings. Eventually, on November 1, 1977 the respondents were forced to terminate the contract with the appellants. They employed another contractor to install the glass to two blocks at the additional cost of $9,011.00. And, because of the delay in the installation of the glass the respondents had to pay the HDB $104,370.00.

In his judgment, the learned Judge found that the appellants, as very experienced glass suppliers to HDB contractors, knew that HDB projects had time limits and that the respondents would have to pay liquidated damages to the HDB for delay beyond the extension period given by the HDB. But he went on to find on the facts that the respondents had not mitigated damages. Accordingly, he held that the appellants were not liable to pay damages to the respondents for the total number of days of delay as determined by the HDB but only for a certain number of days. In assessing the damages in this way, we were of the view that he had taken into account the fact that the appellants were not the contractors for the project and their contract was merely to supply and deliver the glass after substantial completion of the project by the respondents. These being the only complaints made to us against the assessment of damages, we saw no reason to interfere with the assessment.

For all these reasons, the appeal was dismissed with costs.

Appeal dismissed.

Solicitors: *Jing Quee & Chin Joo; Charles N. Mendis.*